



Atty. Dkt. No. 047182-0141

*DFW*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Pulickel AJAYAN et al.

Title: EMBEDDED NANOTUBE ARRAY SENSOR AND METHOD OF MAKING A NANOTUBE POLYMER COMPOSITE

Patent No.: 7,673,521  
Issued: 3/9/2010

Appl. No.: 10/537,944  
International 12/9/2003  
Filing Date:  
371(c) Date: 8/7/06

Examiner: Punam PATEL

Art Unit: 2855

Conf. No.: 6885

**SUPPLEMENTAL REQUEST FOR RECONSIDERATION OF PATENT TERM  
ADJUSTMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Supplemental to the Request for Reconsideration of Patent Term Adjustment (PTA) filed on March 25, 2010, Applicants respectfully request reconsideration of the PTA indicated on the above-identified patent. Applicants disagree with the Determination of Patent Term Adjustment made by the PTO under 35 USC § 154(b). In the Issue Notification, the PTO indicated that the Patent Term Adjustment was 494 days. The PTO's determination is believed to be incorrect because Patent Term Adjustment should be 854 days instead of 494 days. Applicants' calculation of the Patent Term Adjustment is attached as Exhibit 1.

The PTO's Determination of the Patent Term Adjustment is believed to be incorrect because the PTO is not using the actual filing date (commencement date) to determine the starting point of the three years, which in this case is the date the national stage commenced

under 35 USC 371(b). In Federal Register Volume 65 56383 Column 3, the PTO stated its position that:

‘the legislative history of 35 U.S.C. 154(b)(1)(B) indicates that the phrase “actual filing date of the application in the United States” as used in 35 U.S.C. 154(b)(1)(B) means the date the national stage commenced under 35 U.S.C. 371(b) or (f) in the case of an international application.’

No express request was made by the applicant to commence the national stage of processing prior to the 35 USC 371(b) date and the application was not in order for such purpose and the applicable requirements of subsection (c) of this section had not been complied with on the 35 USC 371(b) date, so 371 USC(f) does not impact the commencement date.

Accordingly, the commencement date, under 35 USC 371(b) or (f) is **June 9, 2005**.

PTA should accordingly start to accrue under 35 U.S.C. 154(b)(1)(B) three years from June 9, 2005, on June 9, 2008. The number of days beginning on June 9, 2008 and ending on the date the patent granted (March 9, 2010) is 638 days.

There was an additional 310 days of non-overlapping 1.703(a) USPTO delay. Thus, the total 1.703(a) and (b) USPTO delay is 948 days (i.e.,  $638 + 310 = 948$ ).

Of these 948 days of 1.703(a) and (b) USPTO delay, 64 days of delay overlap. Subtracting the overlap days from total USPTO delay days provides a total non-overlapping USPTO delay of 884 days (i.e.,  $948 - 64 = 884$ ).

Applicants do not dispute the 30 days of delay due to Applicants’ filing of a response on June 8, 2009, to non-final office action dated February 9, 2009.

Therefore, the final Patent Term Adjustment to date should be **854** days (i.e. 884 days of non-overlapping USPTO delays minus 30 days of Applicants’ delay = 854 days). Reconsideration and correction of the Patent Term Adjustment is respectfully requested.

The \$200.00 fee was paid on March 25, 2010. The Commissioner is authorized to charge any fees due to Deposit Account No. 19-0741.

Respectfully submitted,

Date 4/5/10

By 

FOLEY & LARDNER LLP  
Customer Number: 22428  
Telephone: (202) 945-6090  
Facsimile: (202) 672-5399

Leon Radomsky  
Attorney for Applicant  
Registration No. 43,445

CLOSE WINDOW

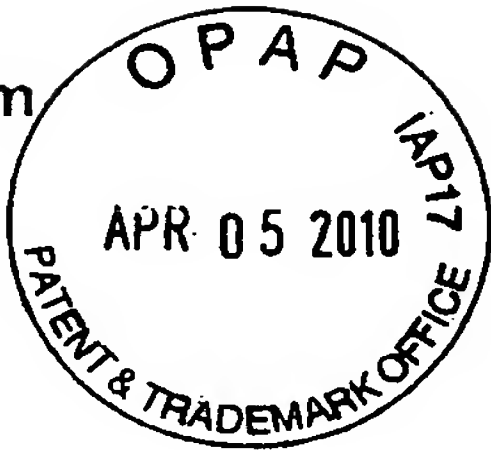
ALL CASES

SELECT CASE

Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 047182-0141  
Application Number: 10/537944  
Patent Number: N/A



	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Priority Date	12/09/2002	-913		
Edit Delete	International Filing Date	12/09/2003	-548		
	PCT National Stage Commencement Date	06/09/2005	0		
Edit Delete	Notice of Missing Requirements	07/31/2006	417		
Edit Delete	Response to Notice of Missing Requirements	08/07/2006	424		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	08/07/2006	424		
	14 month From Application date	10/07/2007	850		
	3 Year Period Starts	06/09/2008	1,096		
Edit Delete	Non-Final Office Action	08/12/2008	1,160	(310)	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/12/2008	1,252		
Edit Delete	Non-Final Office Action	02/09/2009	1,341		
	Non-Final Office Action + 3 months	05/09/2009	1,430		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	06/08/2009	1,460		30
	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	10/08/2009	1,582		
Edit Delete	Notice of Allowance	10/20/2009	1,594	(12)	
Edit Delete	Issue Fee Paid	01/19/2010	1,685		
Edit Delete	Patent Grant Date	03/09/2010	1,734	(638) 884	
			Totals:	884	30
			PTA:	854	

Created and maintained by  
**FOLEY**  
FOLEY & LARDNER LLP